

California Regional Water Quality Control Board
Santa Ana Region

Update To The
NOVEMBER 21, 2003

AGENDA

Please note the following changes to the Agenda:

Item No.:

- 9 **Waste Discharge Requirements, Bruce Hohn/AVMGH II Limited Partnership, Temescal Creek Remediation Project/Inert Waste Disposal, Corona, Riverside County** — This item has been postponed.
- 11 **Report of Hearing Panel to Full Board, Kaiser Resources** — The Panel Hearing in this matter was postponed; therefore, this item has been removed from the agenda.
- 12 **Public Workshop, Basin Plan Amendment, Related to Nitrogen and Total Dissolved Solids Management in the Santa Ana Region** — Documentation for this item may be viewed on our website.
- 13 **Administrative Civil Liability Complaint, Pyro Spectaculars, Inc., San Bernardino County** — The hearing on the ACL Complaint has been removed from the agenda
- 14 **Mandatory Penalties Complaint, USA Gasoline Corporation, San Bernardino County** — This item has been postponed.
- 15 **Mandatory Penalties Complaint, Ross Pallets, Inc., Orange County** — Discharger has waived the right to a hearing.
- 16 **Mandatory Penalties Complaint, Pilkington Aerospace, Inc., Orange County** — Discharger has waived the right to a hearing.
- 17 **Administrative Civil Liability Complaint, Consolidated Container Co., Orange County** — Discharger has waived the right to a hearing.

California Regional Water Quality Control Board
Santa Ana Region
Staff Report
November 21, 2003

ITEM: 17

SUBJECT: Order No. R8-2003-0129 Affirming Administrative Civil Liability
Complaint No. R8-2003-0120, Consolidated Containers Company,
Anaheim, Orange County

BACKGROUND

On October 22, 2003, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2003-0120 to Consolidated Containers Company (Consolidated) for alleged violations of the State General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$3,000 for the alleged violation of failing to submit an Annual Report by the required date, with the condition that if the 2002-3 Annual Report is submitted by the permittee by November 7, 2003, \$1,000 of the \$3,000 assessment will be suspended.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to adopt, reject, or modify Order No. R8-2003-0129 that affirms the proposed administrative civil liability complaint against Consolidated.

ACL No. R8-2003-0120 was issued by the Executive Officer to Consolidated for failing to submit an Annual Report as required by the General Permit.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$700), with the State Water Resource Control Board. One of the requirements of the General Permit is that permittees submit by July 1 of every year, an annual report that documents: storm water sampling and analysis; visual observations of facility conditions; the facility's Annual Comprehensive Site Compliance Evaluation; and a certification as to the accuracy of the submitted information.

Prior to the July 1, 2003 deadline, a notice from the State Water Resources Control Board (SWRCB) was mailed to Consolidated, indicating that a copy of the blank 2002-2003 Annual Report could be accessed via the internet, and that a hard copy would only be mailed if requested. Because the annual report was not received by Board staff by the July 1, 2003 deadline, a Notice of Non-Compliance (NNC) was issued to Consolidated, by certified mail, on July 24, 2003. The return receipt

showed it was received on July 31, 2003. When Board staff received no response to the first NNC, a second NNC was issued on August 25, 2003, again by certified mail, and was received on September 11, 2003. In both NNCs, Board staff requested submittal of the completed annual report by September 25, 2003, a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also identified the mandatory minimum penalty for failure to submit the annual report by the September 25, 2003 deadline.

On August 11, 2003, Board staff was contacted by Mr. Les Potter, Consolidated's environmental consultant. He explained that their corporate office was not forwarding information to the Anaheim facility and that he would be filing a Change of Information form. He was also apprised by Board staff of the requirements under the General Permit. On September 9, 2003, Mr. Potter left a message with Board staff describing the actions that Consolidated had taken and asking that he be notified if there were any questions. On September 17, 2003, Board staff left a detailed telephone message for Mr. Potter, reiterating the requirements of the General Permit and reminding him that an annual report must be received by Board staff by the September 25, 2003 deadline. On September 23, 2003, Board staff spoke with Mr. Potter again; he indicated that he had sent the annual report to Consolidated's Anaheim facility for review and signatures and that the Anaheim facility would submit the report via fax and by mail. On September 25, 2003, Board staff spoke to Mr. Jerry Walton, a representative of the Anaheim facility, regarding the facility's non-submittal of the annual report. Board staff reiterated the mandatory minimum penalty conditions. He indicated that the report would be submitted. To date, the annual report has not been received by this office.

Consolidated failed to submit the required Annual Report to the Regional Board within 60 days from the date on which the original Notice of Noncompliance was sent. Under those circumstances, California Water Code Section 13399.33(c) requires that a mandatory penalty shall be administratively imposed by the Regional Board in an amount that is not less than one thousand dollars (\$1,000).

Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

The Water Code specifies factors the Board shall consider in the establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger was fully aware of the requirements of the General Permit to submit an Annual Report by the July 1 deadline. As of November 5, 2003, this office had not received the 2002-3 Annual Report for this facility.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

There is no prior history of violations.

4. Degree of Culpability

Consolidated submitted an NOI and agreed to comply with the terms and conditions of the General Permit. Consolidated is therefore fully culpable for violating the General Permit, which implements the Clean Water Act. Finally, in addition to the two NNCs, staff contacted Consolidated personnel on several occasions reminding them of the requirement to submit the Annual Report and the consequences of non-submittal.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By not preparing an Annual Report, Consolidated saved approximately \$500 or more, based on whether facility personnel performed and documented the visual observations and runoff sampling requirements set forth in the General Permit.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm, and consistent. The above-described administrative civil liability complaint is in accordance with the State Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board adopt Order R8-2003-0129, affirming the assessment of \$3,000 specified in Administrative Civil Liability Complaint No. R8-2003-0120 issued by the Executive Officer on October 22, 2003.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2003-0129
)	for
Consolidated Container Co.)	Administrative Civil Liability
1201 East Cerritos Avenue)	
Anaheim, CA 92805)	
)	
Attention: Bill Hall)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on November 21, 2003 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2003-0120, dated October 22, 2003, and on the recommendation for the imposition of administrative civil liability pursuant to Water Code Section 13385 in the amount of \$ 3,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). Consolidated Container Company (Consolidated), is authorized to discharge storm water under the Permit, WDID 8301017392. The Permit requires Consolidated to submit an annual report by July 1 of each year. Prior to the July 1, 2003 deadline, the SWRCB mailed a notice to Consolidated indicating that the blank annual report form was available from the website and a hard copy would only be mailed if requested. Consolidated did not submit the annual report by July 1, 2003. Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to Consolidated, the first one on July 24, 2003 and the second one on August 25, 2003. These NNCs reminded Consolidated that the annual report had not been received and that there is a mandatory penalty for non-submittal of the annual report. The NNCs required Consolidated to submit the annual report by September 25, 2003. Prior to September 25, 2003, Consolidated was also reminded by phone to submit the annual report.
2. Consolidated failed to submit the annual report to the Board office within 60 days from the date of the original Notice of Noncompliance.
3. Water Code Section 13399.33(c) requires the Board to assess a mandatory minimum penalty of one thousand dollars (\$1,000) and Section 13385 allows the Board to assess additional penalties for violations of Waste Discharge Requirements.

4. On October 22, 2003, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2003-0120 to Consolidated, proposing that the Board impose civil liability in the amount of \$3,000 on Consolidated for the violations cited above. The complaint further proposed that \$1,000 of this amount would be suspended if the annual report were received by November 7, 2003.
5. To date, the annual report has not been submitted.
6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385, administrative civil liability shall be imposed on Consolidated Containers Company, in the amount of \$3,000 as proposed in Complaint No. R8-2003-0120 for the violations cited, payable as set forth below.

1. Consolidated shall pay the entire amount due to the State Water Resources Control Board by December 22, 2003.
2. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on November 21, 2003.

Gerard J. Thibeault
Executive Officer

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Complaint No. R8-2003-0120
)	
Consolidated Container Co.)	for
1201 East Cerritos Avenue)	Administrative Civil Liability
Anaheim, CA 92805)	
)	
Attention: Bill Hall)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), must impose liability under Section 13399.33 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter has been scheduled for the Board's regular meeting on November 21, 2003, at the Eastern Municipal Water District, in the city of Perris. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of mandatory penalties by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the hearing, the Board must consider whether to affirm, reject or modify the proposed Administrative Civil Liability Complaint or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Consolidated Container Co. (hereinafter Consolidated), located at 1201 East Cerritos Avenue in Anaheim, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 8301017392. The General Permit requires submittal of an annual report by July 1 of each year.
5. Prior to the July 1, 2003 deadline, a notice from the State Water Resources Control Board (SWRCB) was mailed to Consolidated, indicating that a copy of the blank 2002-2003 Annual Report could be accessed via the internet, and that a hard copy would only be mailed if requested. Because the annual report was not received by Board staff by the July 1, 2003 deadline, a Notice of Non-Compliance (NNC) was issued to Consolidated, by certified mail, on July 24, 2003. The return receipt showed it was received on July 31, 2003. When Board staff received no response to the first NNC, a second NNC was issued on August 25, 2003, again by certified mail, and was received on September 11, 2003. In both NNCs, Board staff requested submittal of the completed annual report by September 25, 2003, a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also identified the minimum, mandatory penalty for failure to submit the annual report by the September 25, 2003 deadline.

6. On August 11, 2003, Board staff was contacted by Mr. Les Potter, Consolidated's environmental consultant. He explained that their corporate office was not forwarding information to the Anaheim facility and that he would be filing a Change of Information. He was also apprised by Board staff as to what was required under the General Permit. On September 9, 2003, Mr. Potter left a message with Board staff describing the actions that Consolidated had taken and asking that he be notified if there were any questions. On September 17, 2003, Board staff left a detailed telephone message for Mr. Potter, reiterating the requirements of the General Permit and reminding him that an annual report, completed to the best of their ability, must be received by Board staff by the September 25, 2003 deadline. On September 23, 2003, Board staff spoke with Mr. Potter again; he indicated that he had sent the annual report to Consolidated's Anaheim facility for review and signatures and that the Anaheim facility would submit the report via fax and by mail. On September 25, 2003, Board staff spoke to Mr. Jerry Walton, a representative of the Anaheim facility, regarding the facility's non-submittal of the annual report. Board staff reiterated the mandatory minimum penalty conditions. He indicated that the report would be submitted. To date, the annual report has not been received by this office. This facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 1, 2003.
7. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
8. Based on non-submittal of the 2002-2003 Annual Report, the facility is alleged to have violated the General Permit for 108 days (from July 2, 2003) as of the date of this complaint, and is still in violation. The total maximum liability for this violation is \$1,080,000.
9. Section 13399.33(c) of the California Water Code requires that the Regional Board impose a mandatory, minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
10. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes that civil liability be imposed on Consolidated in the amount of \$3,000 (of this amount, \$1,000 will be suspended if the annual report is received by this office by November 7, 2003) for the violation cited above.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check or money order payable to the State Water Resources Control Board, for the amount of the penalty proposed under Paragraph 10. The bottom portion of the invoice, the waiver form, and the check or money order should be mailed to Sacramento in the enclosed envelope.

If you have any questions, please contact Michelle Beckwith at (909) 782-4433, or Mark Smythe at (909) 782-4998. For legal questions, contact the Regional Board's staff counsel, Jorge Leon at (916) 341-5180.

10/22/23
Date



Gerard J. Thibeault
Executive Officer

In the matter of:)
)
Consolidated Container Co.)
1201 East Cerritos Avenue)
Anaheim, CA 92805)
)
Attention: Bill Hall)

Complaint No. R8-2003-0120
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of Consolidated Container Co. to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0120.

I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of \$3,000 (\$2,000 if the annual report is received by this office by the November 7, 2003 deadline). I understand that I am giving up the right of Consolidated Container Co. to be heard and to argue against allegations made by the Executive Officer in this Complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Consolidated Container Co.



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

*The energy challenge facing California is real.
Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at <http://www.swrcb.ca.gov>*

Gray Davis
Governor

To:

CONSOLIDATED CONTAINER CO.
1201 EAST CERRITOS AVENUE
ANAHEIM, CA 92805

Invoice No: 36767

Invoice Date: 10/21/2003

Enforcement Action ID: 79251

Enforcement Order No: R8-2003-0120

INVOICE

ACLCOMP

Milestone ID	Description	Amount	Due Date
51423	LIABILITY AMOUNT	\$3,000.00	
TOTAL AMOUNT DUE		\$3,000.00	

California Environmental Protection Agency



Retain above portion for your records

Please return bottom portion with your payment

CONSOLIDATED CONTAINER CO.
1201 EAST CERRITOS AVENUE
ANAHEIM, CA 92805

Make your check payable to:

State Water Resources Control Board

Milestone ID	Description	Amount	Due Date
51423	LIABDUE	\$3,000.00	
TOTAL AMOUNT DUE		\$3,000.00	

Mail payment to:

SWRCB ACCOUNTING
ATTN: ENFORCEMENT
P. O. Box 100
SACRAMENTO, CA 95812-0100

Amount Enclosed: \$ _____

PLEASE PRINT THE FOLLOWING INVOICE NUMBER ON YOUR CHECK:

36767

Invoice Date: 10/21/2003

Enforcement Action ID: 79251

Enforcement Order No.: R8-2003-0120